

MISC. CRIMINAL APPLICATION NO. 1759 OF 1997.

Date of decision: 3.7.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Akshay H. Mehta with Mr. Vashi, advocates for the petitioners.

Mr. S.A. Pandya, A.P.P. for respondent No.1- State.

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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July 3, 1997.

Oral judgment:

Respondent No.1, Food Inspector, Food & Drugs Control Department, Valsad, initiated criminal proceedings by filing Criminal Case No. 3022 of 1993 in the Court of learned Judicial Magistrate, First Class, Valsad, against the present petitioners and respondents No.2 to 5 for an offence under Section 16 (a) (i) of the Prevention of Food Adulteration Act ('the Act' for short). Present

petitioners are original accused Nos.5 and 6 and present respondents No.2 to 5 are original accused Nos.1 to 4 respectively. Relying upon the report of the Central Food Laboratory, Gaziabad, the petitioners and respondents No.2 to 5/original accused had applied for discharge vide application dated 16.12.1995, Ex.22. But, vide order dated 11.2.1997, Annexure 'H', the application for discharge has been rejected. Aggrieved by this order, the petitioners have approached this Court under Section 482 of the Code for quashing the complaint and setting aside the impugned order.

The only contention canvassed on behalf of the accused is about the express legal bar for continuance of proceedings. According to the petitioners, despite express legal bar continuation of such proceedings would be de hors the provisions of law, amounting to abuse of process and unnecessary harassment.

In order to appreciate this contention, it would be worthwhile to briefly advert to the facts giving rise to the the present case.

Petitioner No.1, a Public Limited Company is a well-known manufacturer of various food products including tomato ketchup under the trade mark "Maggi" whereas petitioner No.2 is a responsible officer of petitioner No.1 Company and respondents No.2 to 5 are the vendors and wholesalers carrying on business at Valsad. On 20.8.1992 the respondent No.1 complainant purchased tomato ketchup of "Maggi" Brand from the respondent No.2. The said product is manufactured by petitioner No.1 Company. As alleged, the product was sent to laboratory for analysis and was found to be of inferior quality and not confirming the standards laid down under the law. Thus, finding the product as adulterated, the respondent No.1 initiated criminal proceedings under Section 16 (1) (a) (i) of the Act.

According to Section 13 of the Act, any sample collected by Local (Health) Authority has to be sent for analysis and examination to the Public Analyst and on receipt of result of analysis to the effect that the article of food is adulterated, the local authority is empowered to initiate criminal proceedings. Despite adverse report by the Public Analyst, valuable right is conferred upon the accused to send through Court another sample to the Central Food Laboratory for analysis as provided under Section 13 (2-B) of the Act. Sub-section (2-D) provides that until the receipt of the certificate of the result of the analysis from the Director of the Central Food

Laboratory, the court shall not continue with the proceedings pending before it in relation to the prosecution. Sub-section (3) provides that the certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by Public Analyst under sub-section (1). It is true that the report of analysis prepared by Public Analyst, Annexure 'B' is adverse to the petitioners but at the same time, the accused have valuable right of sending another sample for analysis to Central Food Laboratory at Gaziabad and the report of the Director of Central Food Laboratory shall be final and supersede all previous reports.

In this case though sample was sent to the Central Food Laboratory, report received from the Central Food Laboratory which is produced at Annexure 'C', is neither positive nor negative because the product could not be analysed as sample bottle was found broken. In other words, the report Annexure 'C' of the Central Food Laboratory does not show that the food product is adulterated. As provided under sub-section (3), since the report of Central Food Laboratory supersedes all previous reports, the nil report by Central Food Laboratory shall supersede the report of Public Analyst which is adverse to the petitioner. Owing to nil report by Central Food Laboratory in supersession of Public Analyst's report, the product shall be deemed to be as not adulterated consequently no prosecution shall lie and if instituted shall not be continued.

In this case also there is no conclusive evidence (from the Central Food Laboratory) that the food product is adulterated. Consequently, no offence shall be deemed to have been committed and if no offence is committed, no prosecution can be launched, and if launched, cannot be continued. Thus, on the face of it, in such circumstances, there would be express legal bar engrafted under the provisions of the Act from continuing the proceedings which have already been initiated. Despite the legal bar in continuing the proceedings, if such proceedings are continued by giving credence to the report of Public Analyst, in my view, is abuse of process of Court. Therefore, such proceedings deserve to be quashed and set aside.

In support of his contention, Mr. Vashi appearing with Mr. Mehta for the petitioners, has invited my attention to judgments of various High Courts which are briefly discussed as under:

Hindustan Ciba-Geigy Ltd v. State of Rajasthan, 1994 Cr.L.R. (Raj.) 785. In that case complaint was filed under the Insecticides Act after expiry of the shelf life of the insecticide. In that case, after receipt of report of Public Analyst, the accused was deprived of his legitimate valuable right of re-analysis by second sample in the Central Food Laboratory under Section 24 (4) of the Act as there was no sense in sending the sample for analysis after expiry date. Thus taking cognizance of the matter, was held as abuse of process of Court and that to secure ends of justice, the proceedings were quashed.

In the case of Surender Kumar v. State and another, reported in Prevention of Food Adulteration Cases 1977 (1), Delhi High Court, page 160, the report of Central Food Laboratory is held to be final and conclusive and superseding all previous reports and any attempt to give credence to the report of the Public Analyst and continuation of proceedings there upon was held as abuse of process of Court.

In the case of M/s. Pesticides India and others v. State of Rajasthan, 1996 (Cr.L.R. (Raj.) 254, the complaint filed after inordinate delay i.e., after expiry of the shelf life of the sample was held as depriving the accused of valuable right of re-examination by the Central Food Laboratory. Consequently, proceedings were quashed under Section 482 of the Code.

Similar view is also taken by Punjab & Haryana High Court, in the case of Bhai Manjit Singh v. State of Punjab, reported in 1992 (1) Recent Criminal Reports, page 552 and in the case of Bhajan Lal Gupta v. State of Haryana, reported in 1997 Cri.L.J. 190.

Mr. Vashi has also placed reliance upon catena of decisions in support of his contention. In all the following cases cited by Mr. Vashi, it is held that deprivation of the accused of his valuable right of re-examination and continuation of any proceedings in contravention of report of the Central Food Laboratory would amount to abuse of process and the proceedings shall have to be quashed to meet the ends of justice. Mr. Vashi has relied on the following judgments:

M/s. Gupta Chemicals Pvt. Ltd. v. State of Rajasthan & Insecticide Inspector, reported in 1996 (Cr.L.R. (Raj.) 134.

Mr. H. Lange, a German National, Managing Director, M/s. Byer (India) Ltd. v. The State of Punjab and

another, reported in 1986 (1) Recent Criminal Reports (Punjab & Haryana High Court), page 176.

S.K. Abhooja v. State of Haryana, 1989 (1) Recent Criminal Reports (Punjab & Haryana High Court), 596.

Ranju Sharma v. State of Haryana, reported in All India Prevention of Food Adulteration Journal, VII-1993, page 332.

Nagar Swasthya Adhikari v. Hari Singh, Prevention of Food Adulteration Cases (Allahabad High Court), 1982 (1) 249.

Heavy reliance is also placed by him on the decision of the Supreme Court in the case of Chetumal v. State of M.P. and another, reported in 1981 (II), Prevention of Food Adulteration Cases (Supreme Court), page 280, wherein it has been held that if the accused is deprived of his valuable right for getting sample re-examined by the Director of Central Food Laboratory, it is not open to the Court to fall back upon the report of the Public Analyst to convict the accused. In other words, the report of Central Food Laboratory shall supersede all previous reports and shall be relevant for continuation and/or termination of proceedings.

Bombay High Court (Coram: V.H. Bhairavia, J.) has also taken identical view in an unreported judgment in the case of Shri Shantilal H. Barua and others v. State of Maharashtra and another, in Criminal Application No. 1633 of 1990, decided on 22.4.1996. This Court (Coram: N.N. Mathur, J.) has also taken identical view in an unreported judgment in the case of Searle (India) Limited and another v. L.B. Rakholia and others, in Misc. Criminal Application No. 900 of 1992 decided on 30.1.1997.

Under these circumstances, I find no chances of conviction. Therefore, no useful purpose will be served in allowing the proceedings to continue. Thus, in my view, since an express legal bar operates in continuing the proceedings, it is a fit case to quash the impugned proceedings to prevent the abuse of process of Court.

In the result, the application is allowed. Impugned proceedings in Criminal Case No. 3022 of 1993 pending in the Court of learned Judicial Magistrate, First Class, Valsad, are hereby quashed and set aside against the petitioners and respondents No.2 to 5 herein. Rule is made absolute to the aforesaid extent.